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TAGS: ELAB EINV PGOV CH
SUBJECT: COLONEL SANDERS CHANGES HIS WAYS, BUT LABOR LAWS
REMAIN VAGUE

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¶1. (U) On August 8, Kentucky Fried Chicken (KFC) announced at a Beijing news conference that it would stop hiring employees through labor dispatch agencies (LDAs), and begin hiring directly. LDAs are labor contractors, who provide manpower to an employer for a fee. Under this arrangement, the worker's contract is with the LDA, regardless of where he/she works. The LDA, and not the enterprise using the labor, is responsible for providing all legally mandated wages and benefits. The case highlights a commonly abused gray area in Chinese labor law.

¶2. (U) KFC's announcement came after two employees brought KFC to arbitration, claiming that the company was hiring through LDAs only to avoid legal obligations to employees. The complainants argued that they reported directly to KFC managers, and were effectively KFC employees. They demanded back wages and severance pay because KFC sometimes sharply cut back on their hours, and finally terminated them, all without giving notice, explanation or compensation. Under Beijing labor regulations, an employer must pay its employees the monthly minimum wage if it cannot provide full-time work. Beijing regulations also require severance pay when an employer terminates a labor contract.

¶3. (SBU) Shi Fumao, a lawyer from the Beijing Migrant Workers Legal Aid Station, which represented the two workers, told the press that his office had received over 20 similar complaints from KFC workers over the past year. Shi told Laboff on August 15 that ?shaming? KFC in the media was the key to success in this case. KFC's concern for its brand image made it susceptible to negative publicity. Similar cases involving lower profile employers can be very difficult to resolve, he said. Under Chinese labor law, there is no standard for determining when an employer-employee relationship exists, except the existence of a written labor contract, nor is there any provision for

"joint employment," under which LDAs and enterprises using the labor could be held jointly accountable. Shi and other workers' advocates have publicly called for changes to the law to prevent the misuse of LDAs to circumvent employer obligations.

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